

MICHAEL K. JEANES
Clerk of the Superior Court
By Patricia Sanders, Deputy
Date 04/23/2012 Time 12:17:09

Description	Amount
----- CASE# CV2012-007203 -----	
CIVIL NEW COMPLAINT	301.00 W
TOTAL AMOUNT	0.00
Receipt# 22125063	

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8 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
9
10 **IN AND FOR THE COUNTY OF MARICOPA**

11 STATE OF ARIZONA, *ex rel.* THOMAS C.
12 HORNE, Attorney General,

13 Plaintiff,

14 vs.

15 SUN VALLEY TOWING, LLC;
16 KUNSELMAN INDUSTRIES, LLC;
17 TIMOTHY WAYNE KUNSELMAN and
18 ROSEMARY R. KUNSELMAN, husband and
19 wife;

20 Defendants.

Case No.: CV2012 007203

COMPLAINT

21 Plaintiff, State of Arizona, *ex rel.* Thomas C. Horne, Attorney General, alleges as
22 follows:

23 **I. JURISDICTION AND VENUE**

24 1. This action is brought pursuant to the Arizona Consumer Fraud Act,
25 A.R.S. § 44-1521 *et seq.*, to obtain injunctive relief, civil penalties, attorneys' fees and
26

1 costs, investigative expenses and other relief to prevent the unlawful acts and practices
2 alleged in this Complaint and to remedy the consequences of such practices.

3 2. Venue is proper in Maricopa County, Arizona.

4 3. The Superior Court has jurisdiction to enter appropriate orders both prior to and
5 following a determination of liability pursuant to A.R.S. § 44-1528.

6 **II. PARTIES**

7 4. Plaintiff is the State of Arizona, *ex rel.* Thomas C. Horne (“the State”), who is
8 authorized to bring this action under the Arizona Consumer Fraud Act, A.R.S. § 44-1521 *et*
9 *seq.*

10 5. Defendant, SUN VALLEY TOWING, LLC, is an Arizona limited liability
11 corporation engaged in the business of automotive repair, towing, sales and service located at
12 1354 S. 39th Avenue, Phoenix, Arizona, 85009 doing business as Sun Valley Towing.

13 6. Defendant KUNSELMAN INDUSTRIES, LLC was a manager of Defendant
14 SUN VALLEY TOWING, LLC at all times relevant to this Complaint.

15 7. Defendant TIMOTHY WAYNE KUNSELMAN was a manager of Defendant,
16 SUN VALLEY TOWING, LLC and a co-owner of the registered trade name “Sun Valley
17 Towing” at all times relevant to this Complaint.

18 8. Defendant ROSEMARY R. KUNSELMAN was a member of Defendant
19 KUNSELMAN INDUSTRIES, LLC and a co-owner of the registered trade name “Sun
20 Valley Towing” at all times relevant to this Complaint.

21 9. Defendant ROSEMARY R. KUNSELMAN is and was, at all relevant times, the
22 wife of Defendant TIMOTHY WAYNE KUNSELMAN. Defendants TIMOTHY WAYNE
23 KUNSELMAN and ROSEMARY R. KUNSELMAN acted on behalf of their marital
24 community with respect to the allegations contained in this Complaint.
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1 10. When reference is made to "SUN VALLEY TOWING DEFENDANTS," it
2 refers to each of the above named Defendants including SUN VALLEY TOWING, LLC, and
3 to the actions of its owners, officers, managers, employees, agents and independent
4 contractors.

5 **III. THE STATE'S UNDERCOVER INVESTIGATION**

6 11. At all times relevant to this Complaint SUN VALLEY TOWING
7 DEFENDANTS provided automotive repair, towing, sales, service and related goods and
8 services within Arizona.

9 12. A large number of serious consumer complaints regarding SUN VALLEY
10 TOWING DEFENDANTS' business located at 1354 S. 39th Ave, Phoenix, Arizona and
11 Defendant TIMOTHY WAYNE KUNSELMAN, individually, caused the State to commence
12 an undercover investigation in January 2012.

13 13. On January 12, 2012, an automotive expert retained by the State inspected an
14 undercover vehicle owned by the State and verified that the vehicle and the vehicle's fuel
15 system was fully functioning. The expert also placed indicators on the vehicle that would
16 definitively demonstrate if the vehicle's fuel system was accessed for repair.

17 14. After the inspection, the State's investigators, an undercover operator and the
18 State's automotive expert proceeded to a shopping center parking lot located at the northeast
19 corner of 35th Avenue and Van Buren, Phoenix, Arizona, where the State's automotive expert
20 disabled the vehicle by deploying the inertia fuel shutoff switch. Deploying this switch,
21 which shuts off the electrical power to the fuel pump, rendered the vehicle inoperable due to a
22 lack of fuel supply to the engine.

23 15. According to the State's automotive expert, the proper repair for the vehicle was
24 to simply reset the inertia fuel cutoff switch by pressing on a button and setting it back to the
25 down position.
26

1 16. After the vehicle was disabled, the State's undercover operator called Defendant
2 SUN VALLEY TOWING, LLC and told them she had jumped a curb and her vehicle would
3 not start. She was told by an employee of Defendant SUN VALLEY TOWING, LLC that
4 Defendant SUN VALLEY TOWING, LLC would tow the vehicle and not charge for the tow
5 if she got the repair at their shop. The vehicle was then towed to Defendant SUN VALLEY
6 TOWING, LLC's business location at 1354 S. 39th Ave, Phoenix, Arizona. The undercover
7 operator did not accompany the vehicle and returned to the Office of the Arizona Attorney
8 General.

9 17. Undercover video recorded by the State shows that Defendant TIMOTHY
10 WAYNE KUNSELMAN'S employee TIMOTHY TEMPLE, at approximately 11:57 a.m. on
11 January 12, 2012, reset the inertia fuel cutoff switch by pressing down on the button with his
12 finger and setting it back to the down position.

13 18. At approximately 12:02 p.m. on January 12, 2012, the undercover operator was
14 informed telephonically by Defendant TIMOTHY WAYNE KUNSELMAN that the vehicle
15 had no fuel pressure and he needed her authorization to check out the fuel system. The
16 undercover operator gave her authorization.

17 19. At approximately 2:36 p.m. on January 12, 2012, DEFENDANT TIMOTHY
18 WAYNE KUNSELMAN informed the undercover operator telephonically that she had
19 smashed the top deck of the fuel pump. She was quoted a cost of \$340.00 to repair the fuel
20 pump and told that the vehicle would be ready for pick-up later that same day. The
21 undercover operator authorized the repair.

22 20. Defendant TIMOTHY WAYNE KUNSELMAN additionally informed the
23 undercover operator that he would require payment in cash, because his credit card machine
24 had a paper jam, and that she could pick up her vehicle at 4:30 p.m. on January 12, 2012.
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26

1 21. When the vehicle was picked up at 1354 S. 39th Avenue, Phoenix, Arizona, on
2 January 12, 2012, Defendant TIMOTHY WAYNE KUNSELMAN told the undercover
3 operator that the fuel pump had been replaced with a new one and it was covered by a one
4 year warranty.

5 22. The undercover operator requested the return of the old fuel pump, but
6 Defendant TIMOTHY WAYNE KUNSELMAN stated the old fuel pump was smashed in ten
7 pieces and smelled of gasoline and did not provide the old fuel pump.

8 23. The undercover operator was given a repair order to serve as a receipt by
9 TIMOTHY WAYNE KUNSELMAN, which stated "repaired fuel system on vehicle," "1 yr
10 warranty" and a charge of \$340.00.

11 24. The undercover operator paid \$340.00 in cash to Defendant TIMOTHY
12 WAYNE KUNSELMAN.

13 25. Inspection of the undercover vehicle by the State's automotive expert revealed
14 that SUN VALLEY TOWING, LLC had simply re-set the inertia fuel cutoff switch to its
15 down position. Further inspection revealed that SUN VALLEY TOWING, LLC had not
16 removed the fuel tank, which is necessary to access the fuel pump, and thus, did not replace
17 the fuel pump as claimed.

18 26. The evidence shows that Defendants SUN VALLEY TOWING, LLC and
19 TIMOTHY WAYNE KUNSELMAN committed a deceptive act by charging \$340.00 to
20 replace a fuel pump, which repair was unnecessary and not performed.

21 **IV. ADDITIONAL FACTUAL ALLEGATIONS**

22 27. The Arizona Attorney General has received numerous~~numerous~~ customer
23 complaints from 2009 to the present regarding SUN VALLEY TOWING DEFENDANTS,
24 located at 1354 S. 39TH Ave, Phoenix, Arizona. Based upon these customer complaints and
25 34 complaints obtained from other sources, the State alleges that SUN VALLEY TOWING
26 DEFENDANTS, routinely committed the following additional deceptive acts and practices:

1 A. SUN VALLEY TOWING DEFENDANTS performed shoddy automotive
2 repair work, created conditions that required further repairs, and necessitated expensive repair
3 by other vehicle service shops;

4 B. SUN VALLEY TOWING DEFENDANTS promised that vehicles would be
5 repaired by a certain date, but vehicles were not repaired and remained at SUN VALLEY
6 TOWING DEFENDANTS' shop location for weeks, months or were never returned;

7 C. Consumers were promised prices, readiness dates, repairs, services, and
8 refunds that were not honored by SUN VALLEY TOWING DEFENDANTS;

9 D. SUN VALLEY TOWING DEFENDANTS evaded phone calls and did not
10 timely respond to phone calls or communications from customers who were seeking updates on
11 their vehicles, refunds, services, and payments;

12 E. SUN VALLEY TOWING DEFENDANTS regularly sought to deter
13 consumers seeking status updates, refunds or returns of their vehicles with threatening, rude
14 behavior and foul language;

15 F. SUN VALLEY TOWING DEFENDANTS failed to honor warranties by failing
16 to perform warranty work on repairs and parts previously provided to consumers;

17 G. SUN VALLEY TOWING DEFENDANTS routinely promised refunds that
18 were never made, severely delayed promised refunds and deceived consumers by issuing
19 checks drawn on closed accounts for which no funds were available;

20 H. SUN VALLEY TOWING DEFENDANTS collected deposits and payments
21 for automotive work, towing services, equipment hauling and storage services to be provided,
22 and did not perform the services or return the funds or deposits paid; and

23 I. SUN VALLEY TOWING DEFENDANTS repeatedly ordered and received
24 equipment and services such as automotive equipment, electrical work, commercial signs and
25 vehicle registration services and never made agreed upon payments for the equipment or
26 services.

1 **V. VIOLATIONS OF THE CONSUMER FRAUD ACT**

2 28. The State realleges and incorporates by reference the allegations of Paragraphs 1
3 to 27 of this Complaint.

4 29. As alleged above, in the conduct of their business, Defendants used deception,
5 deceptive acts or practices, fraud, false pretense, false promise, misrepresentation or
6 concealment, and suppression or omission of material facts with intent that others rely upon
7 such concealment, suppression or omission, in connection with the sale and advertisement or
8 merchandise, in violation of the Arizona Consumer Fraud Act, §§ 44-1521 *et seq.*

9 30. At all times relevant to this Complaint, Defendants acted willfully, in violation
10 of A.R.S. § 44-1531.

11 **VI. RELIEF REQUESTED**

12 WHEREFORE, the State respectfully requests that the Court:

13 1. Prohibit Defendants from violating the Consumer Fraud Act, A.R.S. § 44-1521
14 *et seq.*

15 2. Issue a permanent injunction, enjoining and restraining SUN VALLEY
16 TOWING DEFENDANTS or any business entity in which they serve as officers, managers,
17 owners, or members from engaging in the business of automotive repair, towing, sales or
18 service.

19 3. Issue a permanent injunction, enjoining and restraining Defendants SUN
20 VALLEY TOWING, LLC, TIMOTHY WAYNE KUNSELMAN, and ROSEMARY R.
21 KUNSELMAN from serving as officers, managers, owners, or members in a business
22 requiring a tow truck permit as set forth in A.R.S. § 28-1108 *et seq.* or applying for or holding
23 a tow truck permit.

24 4. Order Defendants to make restitution to consumers.

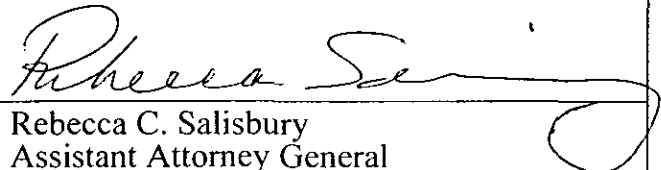
25 5. Order Defendants to pay the State of Arizona \$10,000.00 per each willful
26 violation of the Consumer Fraud Act pursuant to A.R.S. § 44-1531.

1 6. Order Defendants to pay the costs of investigation and reasonable attorneys' fees
2 pursuant to A.R.S. § 44-1534.

3 7. Order such other and further relief as the Court may deem just and proper.

4 RESPECTFULLY SUBMITTED this 23rd day of April, 2012.

5 THOMAS C. HORNE
6 Attorney General

7 
8 Rebecca C. Salisbury
9 Assistant Attorney General
10 Attorneys for Plaintiff

11 #2612858